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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,614	06/28/2001	George Robert Atkinson	078883-0133	4908
22428 7	7590 03/19/2003			
FOLEY AND LARDNER			EXAMINER	
SUITE 500 3000 K STREI			DOUGLAS, STEVEN O	
WASHINGTON, DC 20007			ART UNIT	PAPER NUMBER
			3751	
			DATE MAILED: 03/19/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

7		Application No.	Applicant(s)			
Office Action Summary		09/892,614	ATKINSON ET AL.			
		Examiner	Art Unit			
		Steven O. Douglas	3751			
Th MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). Status						
1)⊠	Responsive to communication(s) filed on 28 J	<u>une 2001</u> .				
2a) <u></u> □	This action is FINAL. 2b) Thi	s action is non-final.	;			
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. Disposition of Claims						
4) 🖂	Claim(s) 1-14 is/are pending in the application					
	4a) Of the above claim(s) is/are withdrawn from consideration.					
5) 🗌	Claim(s) is/are allowed.					
6)	Claim(s) is/are rejected.					
7)	Claim(s) is/are objected to.					
8) Claim(s) 1-14 are subject to restriction and/or election requirement.						
Application Papers						
9)☐ The specification is objected to by the Examiner.						
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner.						
If approved, corrected drawings are required in reply to this Office action.						
12)☐ The oath or declaration is objected to by the Examiner.						
Priority under 35 U.S.C. §§ 119 and 120						
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).						
a)	☐ All b)☐ Some * c)☐ None of:					
1. Certified copies of the priority documents have been received.						
	2. Certified copies of the priority documents have been received in Application No					
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).						
 a) The translation of the foreign language provisional application has been received. 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. 						
Attachment(s)						
2) Notic	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Informal	y (PTO-413) Paper No(s) Patent Application (PTO-152)			

Art Unit: 3751

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Claims 1-4 and 13, drawn to a head apparatus for a microarraying apparatus, classified in class 141, subclass 130.
- II. Claims 5-12, drawn to a microarraying apparatus, classified in class 141, subclass130.
- III. Claim 14, drawn to a spotting method using a microarrayer, classified in class141, subclass 130.

The inventions are distinct, each from the other because of the following reasons:

Inventions II. and I. are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed, particularly a vertical drive cooperating with a positioning mechanism. The subcombination has separate utility such as use with a microarraying apparatus not requiring a height adjustment mechanism.

Inventions III. and I. are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice a process not requiring vertical alignment of the well plate platform.

Application/Control Number: 09/892,614

Art Unit: 3751

Inventions III. and II. are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice a process not requiring vertical alignment of the well plate platform.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is 703-308-0891. The examiner can normally be reached on Wed-Fri 6:30-7:00.

Application/Control Number: 09/892,614

Art Unit: 3751

Page 4

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

Primary Examiner Art Unit 3751

SD

March 19, 2003